

Santosh

**IN THE HIGH COURT OF BOMBAY AT GOA
FIRST APPEAL NO.5 OF 2018**

Ganpat Singh,
son of late Rewat Singh, aged 49 years,
married, service, resident of House
No.T-4, D-Block, Pradnya Apartment,
Church Colony, Mangeshi, Ponda, Goa.

..... Appellant.

Versus.

1. Gundu Chandrashekar,
son of Gatumallu, aged 29 years, driver,
resident of House No.2-5-669, Subedar
Post Office, Hanamkonda, Warangal-
Telangana-State.

2. Mrs. Diddi Anuradha
Venkateshwarlu,
major, owner, resident of House No.25-
10-185, Bapuji Nagar, Kazipet,
Hanmakon, District – Warangal,
Telangana-State.

3. The National Insurance Company
Ltd, House No.8-5-49/1, IInd floor,
Seetharama Complex, Opposite Sunil
Theatre, Station Road, Warangal,
Telangana-State.

..... Respondents.

Mr. Milton Marshal, Advocate *for the Appellant.*

Mr. Amey Kakodkar, Advocate *for Respondent No.3.*

CORAM : M. S. SONAK, J.

DATE : 23rd June 2022

ORAL JUDGMENT: -

1. Heard Mr. Milton Marshal for the Appellant and Mr. Amey Kakodkar for Respondent no.3-Insurance Company.
2. This Appeal challenges an Award dated 11th September 2017 by which the Motor Accident Claims Tribunal (Tribunal) has awarded compensation of ₹11,963/-, with interest at the rate of 5% per annum from the date of the claim petition to the Appellant-Claimant who suffered injuries in a vehicular accident that took place on 6/9/2015.
3. Mr. Milton Marshal, the learned Counsel for the Appellant, submits that there is clear evidence on record about the Appellant suffering a loss of ₹1,18,380/- towards salary that he could not earn for 3 ½ months when he was being treated for the injuries sustained by him. Accordingly, he submits that an award of at least ₹10,000/- should have been made towards conveyance.

4. Mr. Milton Marshal submits that an award of ₹5,000/- towards pain and suffering is too inadequate, and at least ₹1,00,000/- should have been awarded considering the evidence on record. Furthermore, he submits that the evidence also indicates an implant that will eventually have to be removed by surgical intervention. He, therefore, submits that an award should have been made towards medical expenses in the future. Finally, he submits that at least ₹25,000/- should have been awarded towards a special diet.

5. Mr. Marshal submits that even the award of interest at the rate of 5% per annum is too inadequate.

6. Mr. Kakodkar, learned Counsel for Respondent No.3 defends the award based on the reasoning reflected therein. He states that the compensation awarded is consistent with the evidence produced on record by the Appellant and, therefore, this Appeal may be dismissed. He points out that there is no evidence whatsoever towards transportation, special diet, or necessity of any operation in the future.

7. The rival contentions now fall for determination.

8. The evidence on record overwhelmingly bears out that the Appellant could not attend to his duties for almost 3 ½ months when he was being treated for the injuries he suffered in the vehicular accident. The evidence of Navin Maloo (AW.2), Accounts Officer with Himcast Company where the Appellant was employed, is most relevant in this context.

9. AW.2 has deposed that the Appellant was drawing a net salary of ₹ 33,217/- per month. He had deposed that the Appellant had no balance of paid leave when he met with the accident in September 2015. He has deposed that from 7/9/2015 to 22/12/2015, the Appellant was on leave without pay, and nothing was paid to the Appellant for the said period.

10. Considering the above evidence of AW.2 and other documentary evidence on record, the Tribunal was not justified in refusing to make any award towards loss of salary. The Appellant is, therefore, entitled to compensation of ₹1,11,837/- towards loss of salary for 3 ½ months during which he could not attend to his duties. Such inability to attend had a direct nexus with the accident and the injuries suffered by the Appellant in such accident.

11. Though the Appellant may not have produced any bills for conveyance, the evidence on record proves that the Appellant was admitted to the hospital on 6/9/2015 and discharged on 24/9/2015. After that, there is evidence that the Appellant had to attend the Department of Physiotherapy at Bambolim, Goa, for several days. For all this, the Appellant's relatives and the Appellant himself must have incurred transportation expenses. Moreover, the Appellant had suffered injuries to his right leg and had to undergo an operation. Therefore, the Appellant's claim towards transportation expenses has to be allowed, and compensation of ₹5,000/- can be awarded to the Appellant.

12. The Tribunal was again not justified in awarding only ₹5,000/- towards pain and suffering. This is a case where the Appellant was admitted to the Goa Medical College for almost 18 days. During this period, he underwent an operation. After that, he had to attend the Department of Physiotherapy at the Goa Medical College for several days. An award of only ₹5,000/-, in such circumstances, is inadequate. This amount is required to be enhanced to ₹50,000/-. There is evidence of an implant. Though there is no clear evidence about the necessity of surgical intervention in the future, the same cannot also be ruled out. In

any case, considering the injuries suffered by the Appellant, there are bound to be medical expenses in the future. Therefore, an award of ₹25,000/- will be appropriate.

13. The Appellant has already been awarded ₹5,962/- towards medical expenses incurred by him and ₹1,000/- towards attendant charges. Therefore, these amounts will have to be retained. The interest at only 5% per annum is also inadequate. Considering that this accident occurred in 2015, the same is enhanced to 7% per annum.

14. The Appellant is, thus, entitled to a compensation of ₹1,98,799/-, which can safely be rounded off to ₹2,00,000/-. On this amount, the Appellant will be entitled to interest at the rate of 7% p.a. from the date of the claim petition till the date of actual payment.

15. The Respondents are jointly severally liable to pay and are directed to pay the above amount after deducting the payments already made if any. In addition, the Respondents are jointly and severally liable to pay interest at the rate of 7% per annum from the date of the claim petition till the date of actual payment.

16. The Respondents are now directed to deposit this enhanced compensation amount in this Court within six weeks from today, after giving due intimation to the learned Counsel for the Appellant. Upon deposit, the Appellant would be entitled to withdraw the same by furnishing bank details so that the Registry can directly transfer this amount into the Appellant's bank account. The Appellant will have to pay the differential Court Fee amount before seeking withdrawal/transfer of the amount.

17. The Appeal is allowed to the extent above.

18. There shall be no order for costs.

M. S. SONAK, J.

SANTOSH S MHAMAL

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